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6 Of Attorneys for Kaiser Defendants

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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON
11 TACOMA DIVISION

12 MARY E. BENTON, individually; LINDA S.
13 MCPHERSON, individually; DORINDA M.
14 OTERO, individually and collectively on
behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 KAISER PERMANENTE, a business entity,
exact form unknown; KAISER FOUNDATION
18 HOSPITALS, a California corporation; KAISER
FOUNDATION HEALTH PLAN, INC. D.B.A.
19 KAISER FOUNDATION HEALTH PLAN, a
California corporation; KAISER
20 FOUNDATION HEALTH PLAN OF THE
NORTHWEST, an Oregon corporation;
21 KAISER PERMANENTE HEALTH
ALTERNATIVES, an Oregon corporation;
22 NORTHWEST PERMANENTE, P.C., an
Oregon professional corporation; ROE
23 CORPORATIONS 1 through 100, inclusive.

24 Defendants.
25
26

Case No. 3:13-cv-05998-BHS

AMENDED STIPULATED PROTECTIVE
ORDER

STIPULATED PROTECTIVE ORDER- 1
Case No. 3:13-cv-05998-BHS

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1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary, or
3 private information for which special protection may be warranted. Accordingly, 'the parties'
4 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
5 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
6 protection on all disclosures or responses to discovery, the protection it affords from public
7 disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles, and it does not presumptively entitle
9 parties to file confidential information under seal.
10

11 2. "CONFIDENTIAL" MATERIAL

12 "Confidential" material shall include the following documents and tangible things
13 produced or otherwise exchanged: (1) plaintiffs' medical records; (2) social security numbers;
14 (3) confidential information about Kaiser members not parties to this lawsuit; (4) proprietary
15 information relating to the "Patient Support Tool"; (5) proprietary, internal information relating
16 to organizational functions and membership of Kaiser committees; (6) proprietary, internal
17 information relating to costs and methods of treatment of Kaiser members; (7) proprietary,
18 internal written policies and procedures created by these defendants and their various peer
19 review/quality assurance committees.
20

21 3. SCOPE

22 The protections conferred by this agreement cover not only confidential material (as
23 defined above), but also (1) any information copied or extracted from confidential material;
24 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
25 testimony, conversations, or presentations by parties or their counsel that might reveal
26

STIPULATED PROTECTIVE ORDER- 2
Case No. 3:13-cv-05998-BHS

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1 confidential material. However, the protections conferred by this agreement do not cover
2 information that is in the public domain or becomes part of the public domain through trial or
3 otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material that is
6 disclosed or produced by another party or by a non-party in connection with this case only for
7 prosecuting, defending or attempting to settle this litigation, confidential material may be
8 disclosed only to the categories of persons and under the conditions described in this agreement.
9 Confidential material must be stored and maintained by a receiving party at a location and in a
10 secure manner that ensures that access is limited to the persons authorized under this agreement.

11 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the designating party, a receiving party may
13 disclose any confidential material only to:
14

15 (a) the receiving party's counsel of record in this action, as well as, employees of
16 the counsel to whom it is reasonably necessary to disclose the information for this litigation;
17

18 (b) the officers, directors and employees (including in house counsel) of the
19 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
20 agree that a particular document or material produced is for Attorney's Eyes Only and is so
21 designated;
22

23 (c) experts and consultants to whom disclosure is reasonably necessary for this
24 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the court, court personnel, and court reporters and their staff;

26 (e) copy or imaging services retained by counsel to assist in the duplication of the

1 confidential material, provided that counsel for the counsel retaining the copy or imaging service
2 instructs the service not to disclose any confidential material to third parties and to immediately
3 return all originals and copies of any confidential material;

4 (f) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound",
6 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
7 deposition testimony or exhibits to depositions that reveal confidential material must be
8 separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this agreement;
10

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information.

13 4.3 Filing Confidential Material. Before filing confidential material or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party
15 to determine whether the designating party will remove the confidential designation, whether the
16 document can be redacted, or whether a motion to seal or stipulation and proposed order is
17 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
18 standards that will be applied when a party seeks permission from the court to file material under
19 seal.
20

21 5. DESIGNATION PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designation Material for Protection. Each party
23 or non-party that designates information or items for protection under this agreement must take
24 care to limit any such designation to specific material that qualifies under the appropriate
25 standards. The designating party must designate for protection only those parts of material,
26

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of the agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or delay the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated
9 for protection do not qualify for protection, the designating party must promptly notify all other
10 parties that it is withdrawing the mistaken designation.

11
12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16
17 (a) Information in documentary form:(e.g. paper or electronic documents and
18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
19 the designating party must affix the word "CONFIDENTIAL" to each page that contains
20 confidential material in a manner that does not obscure the information in the document. If only
21 a portion or portions of the material on a page qualifies for protection, the producing party also
22 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
23 margins).

24
25 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
26 parties must identify on the record, during the deposition , hearing or other proceeding, all

1 protected testimony, without prejudice to their right to so designate other testimony after
2 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
3 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a prominent place on
5 the exterior of the container or containers in which the information or item is stored the word
6 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
7 the producing party, to the extent practicable, shall identify the protected portion(s)
8

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information nor items does not, standing alone, waive the designating party's
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving party must make reasonable efforts to ensure that the material is
13 treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of challenges. Any party or non-party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or significant disruption or delay of the litigation, a party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.
21

22 6.2 Meet and confer. The parties must make every attempt to resolve any dispute
23 regarding confidential designations without court involvement. Any motion regarding
24 confidential designations or for a protective order must include a certification, in the motion or in
25 the a declaration or affidavit, that the movant has engaged in a good faith meet and confer
26

1 conference with other affected parties in an effort to resolve the dispute without court action.

2 The certification must list the date, manner and participants to the conference. A good faith
3 effort to confer requires a face-to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve challenge without court
5 intervention, the designating party may file and serve a motion to retain confidentiality under
6 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
7 the persuasion in any such motion shall be on the designating party. Frivolous challenges, and
8 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
9 on other parties) may expose the challenging party to sanctions.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that compels
14 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
15 party must:

16 (a) promptly notify the designating party in writing and include a copy of the
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue
19 in the other litigation that some or all of the material covered by the subpoena or order is subject
20 to this agreement. Such notification shall include a copy of this agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by
22 the designating party whose confidential material may be affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or to otherwise, it has disclosed
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1 confidential material to any person or in any circumstance not authorized under this agreement,
2 the receiving party must immediately (a) notify in writing the designating party of the
3 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
4 protected material, (c) inform the person or persons to whom unauthorized disclosures were made
5 of all the terms of this agreement, and (d) request that such person or persons execute the
6 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.
7

8 9 INADVERTENT PRODUCTION OF PRIVILEGED OR PROTECTED MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
12 provision is not intended to modify whatever procedure may be established in an e-discovery
13 order or agreement that provides for production without prior privilege review. Parties shall
14 confer on an appropriate non-waiver order under Fed. R. Evid. 502.
15

16 10. NON TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 days after the termination of this action, including all appeals, each receiving
18 party must return all confidential material to the producing party, including all copies, extracts
19 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
20 destruction.
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22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product and consultant and expert
25 work product, even if such materials contain confidential material.
26


The confidentiality obligations imposed by this agreement shall remain in effect until a

1 designating party agrees otherwise in writing or a court orders otherwise.

2 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD

3 DATED this 14th day of April 2014.

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6 
Counsel for Plaintiff

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8 
Counsel for Defendant

9 ORDER

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11 Based on the foregoing, IT IS SO ORDERED.

12 DATED: 4/18/14

13 THE HONORABLE BENJAMIN H. SETTLE

14 
15 United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print/type full name], of
_____, [print/type full address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of **Benton v. Kaiser**, No. 3:13-cv-05998-BHS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provision of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after the termination of this action.